

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

RICHARD PEYTON :
: :
v. : C.A. No. 07-148ML
:
WMC MORTGAGE CORPORATION, :
DEUTSCHE BANK NATIONAL TRUST :
COMPANY, N.A., as Trustee of :
MORGAN STANLEY ABS CAPITAL 1 :
INC., Asset Backed Pass Through :
Certificates Series 2006-WMC2 Under :
the Pooling and Servicing Agreement :
Without Recourse, WELLS FARGO :
BANK and DOES 1-5 :
:

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before the Court for a report and recommendation is Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint. (Document No. 30). Plaintiff in this case is represented by the same attorney as the plaintiff in Melfi v. WMC Mortgage Corp., C.A. No. 08-024ML. Both cases involve the legal sufficiency of a Notice of Right to Cancel a loan transaction under the federal Truth in Lending Act ("TILA"). In a Memorandum dated July 28, 2008 and filed in the Melfi case, Plaintiff's attorney advised the Court that the "legal issue[s] presented" in Melfi and this case are "identical." See Document No. 21 at p. 1 in Melfi.

On November 19, 2008, this Court issued a Report and Recommendation in Melfi which recommends dismissal of Plaintiff's TILA claims. Since this case presents the "identical" legal issue as that presented in Melfi, this Court also recommends that Defendant's Motion to Dismiss be

GRANTED in this case for the reasons stated in the Melfi Report and Recommendation (which is attached hereto as Exhibit A and incorporated by reference).

For the foregoing reasons, this Court recommends that Defendant's Motion to Dismiss (Document No. 30) be GRANTED and that Plaintiff's Second Amended Complaint be DISMISSED in its entirety.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within (10) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
November 19, 2008